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CUSTOMS TRANSIT IN THE SOUTH AMERICAN COUNTRIES

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CONTENTS

		Page
I.	Introduction	1
II.	Institutional background of international road transport	1
III.	Customs transit in international transport agreements	2
IV.	The treatment of international customs transit in LAFTA	3
V.	The interest of the ministers of public works and transport of the Southern Cone countries in the TIR Convention	5
VI.	Other expressions of interest in international customs transit	6
VII.	Conclusions	8

/I. INTRODUCTION

I. INTRODUCTION

After World War II, a great impetus was given to international road transport in Europe, and it became evident that there was need to facilitate frontier operations in order to avoid long delays for vehicles. Because of Europe's geographical features and short distances between countries, such vehicles must cross several frontiers even on relatively short journies.

In order to meet this need, a small number of European countries began in 1949 to apply certain common customs transit procedures that subsequently provided the basis for negotiating the Customs Convention on the International Transport of Goods under Cover of TIR Carnets (TIR Convention), which was adopted in 1959 and expanded in 1975 to include multimodal transport. By applying common customs transit procedures, the European countries sought to rationalize and simplify the intervention of frontier customs authorities and to make it possible for goods to be exported or imported through international cargo terminals in the interior that would be close to the exporter or importer, as the case might be.

International transport operators in South America have also been concerned with the need to obtain customs clearance of goods at the point of destination rather than at the frontier, although for different reasons.

On most of the roads used for international transport in South America, border crossings are located in remote areas where it would not be feasible to have all the banking, customs and other services required in connexion with export and import procedures. Moreover, these procedures call for the goods to be accompanied by a number of commercial and official documents. Where communications between border crossings and banking centres and main offices of official agencies are inadequate, as is usually the case in South America, export and import procedures at the frontier entail considerable delays, thus reducing the productivity of transport vehicles and increasing costs to users of transport services.

Although the European countries had somewhat different reasons for applying a common customs transit régime such as the TIR system, their experience, particularly as regards the mechanisms used, can be very useful in solving the problem of international transport operators in the region, who wish to minimize delays in the transport of cargo from the place of origin to the final destination.

II. INSTITUTIONAL BACKGROUND OF INTERNATIONAL ROAD TRANSPORT

International transport between South American countries has traditionally been carried out by sea. The concern with international road transport arose in South America in the early 1960s among the Atlantic coast countries. This concern was first institutionalized with certain internal measures established to regulate the overland transport of goods across national boundaries. The first government regulation was issued in Uruguay on 28 June 1962 for the purpose of facilitating -subject to reciprocity- the entry of automotive cargo vehicles from countries members of the Latin American Free Trade Association (LAFTA). On 8 March 1963, the Government of Brazil issued decree No. 51813/A authorizing the entry into the country of trucks transporting properly declared cargo from those countries with which Brazil had road connexions with customs facilities and which extended reciprocal treatment in their territories to trucks coming from Brazil. This provision made possible the traffic of trucks between Brazil and Uruguay.

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Subsequently, on 19 August 1963, the Argentine National Customs Administration issued general resolution No. 10/63, which provided that goods from bordering countries arriving in the Argentine Republic by road could be cleared in the vehicle or alongside it and could then proceed to the final destination in the same vehicle, provided it came from a country which offered reciprocal treatment and which complied with the requirements established in the resolution. This provision of the Government of Argentina extended traffic to three countries, namely, Argentina, Brazil and Uruguay.

The problems that arose because of the lack of harmonization and uniformity of criteria for the practical application of these provisions led the Governments of Argentina, Brazil and Uruguay to meet in Buenos Aires, from 9 to 16 December 1965, in order to study the possibility of setting up uniform joint procedures to facilitate the expansion of road transport among the three countries. As a result of this meeting, the countries prepared a draft convention which was opened to signature by their Governments as well as by any other member of LAFTA.

Finally, on 19 October 1966, the Governments of Argentina, Brazil and Uruguay signed the convention on international land transport, to which Chile and Paraguay adhered in 1967. This instrument is known as the Convenio Quintopartito (Five-Part Agreement); in signing it, the Contracting Parties sought to encourage the expansio of reciprocal trade and tourism and contribute to the achievement of integration as advocated by LAFTA.

Shortly after signing their own Subregional Agreement on 26 May 1969, the countries of the Andean Group began to draw up a convention on international road transport which was adopted by Decision 56 at the IX regular session of the Commission of the Cartagena Agreement, in August 1972. Subsequently, by Decision 56A, taken at the XII regular session (July 1973), the documents for international road transport were approved as annex 2 to Decision 56.

This decision was ratified by Colombia on 15 September 1973 by decree No. 1910; by Venezuela, by means of an approval law dated 26 September 1973; by Peru, on 13 July 1976, by decree law No. 21546; and by Bolivia, on 14 July 1977, by supreme decree No. 14733.

At the V Meeting of Ministers of Public Works and Transport of the Southern Cone countries, held in 1974 in Santiago, Chile, negotiations were begun on a convention designed to replace the Convenio Quintopartito. At the VIII Meeting of Ministers, held at Mar del Plata in November 1977, the Convention on International Land Transport was adopted, with three annexes (annex 1: Customs aspects; annex 2: International motor transport by road, and annex 3: Migratory aspects). This convention was signed by the Governments of the Argentine Republic, the Federative Republic of Brazil, the Republic of Bolivia, the Republic of Chile, the Republic of Paraguay, the Republic of Peru and the Eastern Republic of Uruguay.

III. CUSTOMS TRANSIT IN INTERNATIONAL TRANSPORT AGREEMENTS

Article 8 of the 1966 Convenio Quintopartito (Five-Part Agreement) established as a general rule that cargo was to be cleared at the frontier, either on the vehicle or alongside it. Nevertheless, in the same article, the Contracting Parties undertook to study a system for clearing goods at the point of destination when they were transported in containers or closed trailers capable of being sealed. Annex 1 of the same Agreement, on Customs aspects, established in article 6(f) that when the contracting parties adopted the system of transporting goods in closed and sealed containers or trailers as suggested in article 8 of the Agreement,

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the goods thus transported could be cleared at the point of destination, if such a procedure was authorized by the competent customs office. This meant that it was left to the national customs authorities to decide for themselves whether to sanction customs transit procedures from the frontier to the interior of the country.

Six years later, the negotiators of Andean Group Decision 56 understood the need to establish restrictively that when cargo is transported in containers or closed vehicles, customs clearance must be made at the point of destination, without leaving the system contingent upon the mere wishes of the relevant customs offices. Article 29 of Decision 56 establishes that, within 120 days reckoned from the entry into force of this Decision, each member country is to adopt a system for clearing at the point of destination any goods transported in containers or in closed and sealed vehicles. Article 69 of chapter III, Customs aspects, of annex 1 reinforces the above provision by establishing that when cargo is transported in containers, vans, trailers or semi-trailers having closed load compartments, the member countries are to adopt the following measures: (1) the Customs of the member country of origin will certify in the manifest its conformity with respect to the cargo being shipped and will seal the said containers or vehicles; (2) the frontier customs office will only examin the seals placed by the customs office of origin and, if these are found to be intact, will allow the vehicles to proceed to their destination without prejudice to its placing its own seal should it consider this to be necessary, and (3) the cargo will be cleared at the customs office at the point of destination.

During negotiations concerning the Convention on International Land Transport signed by the Southern Cone countries to replace the Convenio Quintopartito, it was decided that cargo should be cleared in accordance with the legislation in force in each country. However, annex 1, on customs aspects, established as a general principle that the transport of goods under the protection of the Convention would be carried out under the international customs transit régime. Under this régime, goods may be transported within the country of each signatory country: (a) from a customs office of entry to a customs office of departure; (b) from a customs office of entry to a customs office in the interior, and (c) from a customs office in the interior to a customs office of departure. The international customs transit régime applies both to the goods transported and to the units for the land transport of cargo and passengers.

The negotiators who prepared the Convention on International Land Transport of the Southern Cone countries included in the convention provisions that were almost the same as those established shortly before as common standards for international customs transit for members of LAFTA. The idea was that the application of common customs transit procedure in every member country of the convention would in itself bring about the harmonization necessary to facilitate international transport operations.

IV. THE TREATMENT OF INTERNATIONAL CUSTOMS TRANSIT IN LAFTA

The LAFTA Meeting of National Customs Directors, through its Groups of Experts on Customs Techniques attached particular importance -through its programme for harmonizing customs procedures- to the establishment of commo standards for international customs transit. At the VI Meeting of the Group of Experts on Customs Techniques, held at Montevideo from 10 to 20 May 1971, the first proposal on harmonization of customs transit procedures applicable to different transport

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modes was prepared, in accordance with the provisions of the LAFTA plan of action contained in resolution 262 (IX). Upon examining the Group's proposals at the XII regular session of LAFTA (November and December 1972), the conference of contracting parties was unable to reach unanimous agreement, and so it decided by resolution 318 (XII), to delegate to the Permanent Executive Committee the power to adopt standards aimed at harmonizing customs transit procedures.

The IX Meeting of the Group of Experts on Customs Techniques, held from 20 to 31 May 1974, approved preliminary draft common standards on customs transit procedures, which were subsequently revised at the XI Meeting of the Group of Experts on Customs Techniques (7 to 27 May 1976). The revised draft common standards were approved at that meeting which took into account annex E1, on Custo transit, approved by the Customs Co-operation Council within the framework of the International Convention on the simplification a harmonization of customs procedures (Kyoto Convention). The draf common standards were subsequently approved by the IX Meeting of National Customs Directors (10 to 13 August 1976). Finally, taking up the recommendations of the Group of Experts on Customs Technique and of the National Customs Directors, the Permanent Executive Committee of LAFTA by resolution 403 of 5 September 1979, adopted the customs transit régime and the model transit declaration as common standards for its member countries and recommended that, when making substantive changes in their respective legislation, the contracting parties should bear in mind these standards.

During their discussions on the common standards for customs transit and their study of the transit declaration form, the experts concluded that in order to apply a common customs transit system among member countries, it would be necessary, in addition to applying the aforementioned standards and using a common transit declaration, to solve the problem of customs guarantees. In this regard, they pointed out the advisability of achieving, through LAFTA, proper co-ordination among the insuring institutions of member countries, in order to set up guarantee mechanisms that would adequately protect the treasury without placing an undue burden on users. The XII Meeting of Experts on Customs Techniques (23 to 31 May 1977) agreed to recommend that the next meeting of insurers convened by LAFTA should examine the problem of customs guarantees for the application of the customs transit régime in the LAFTA region and that it should consider the possibility of establishing a region-wide or equivalent system that would allow for satisfactory guarantees to be provided, both to users and to the Customs, against the risk of non-payment of import duties applicable within the framework of the régime and among the member countries applying it, both with respect to goods in transit and to the vehicles transporting them. Nevertheless, no satisfactory solution seems to be in sight regarding the establishment of a region-wide guarantee system for international customs transit.

V. THE INTEREST OF THE MINISTERS OF PUBLIC WORKS AND TRANSPORT OF THE SOUTHERN CONE COUNTRIES IN THE TIR CONVENTION

In analysing the Convention on International Land Transport, the Meeting of Ministers decided to incorporate in the annex on customs aspects the provisions that had been harmonized by LAFTA. These provisions, however, do not meet the guarantee requirements for insuring payment of import or export duties or both, as the case might be, or compliance with other customs obligations. Therefore, at the IX Meeting of Ministers of Public Works and Transport of the Southern Cone countries held at Cochabamba, Bolivia, from 28 May to 2 June 1979, on a proposal by the delegation of Argentina, it was decided to study the advisability of adherin to the Customs Convention on the International Transport of Goods under Cover of TIR Carnets (TIR Convention) drawn up in Geneva in 1975, considering that it had been applied satisfactorily in Europe since 1959. Thus, the Government of the Argentine Republic was asked to convene a meeting of representatives of agencies responsible for applying the International Convention on Land Transport, and custom experts. This meeting was held between 27 and 29 June 1979 in Buenos Aires and was attended by delegates of seven countries (Argentina, Bolivia, Brazil, Chile, Paraguay, Peru and Uruguay), as well as by representatives of LAFTA, the World Bank, the Institute for Latin American Integration (INTAL), the United Nations Economic Commission for Latin America (CEPAL), the Latin American Railways Association (ALAF) and the Latin American Road Transport Association (ALATAC). Representatives of the International Road Transport Union (IRU), the United Nations Economic Commission for Europe (ECE), and the UNCTAD Special Programme on Trade Facilitation (FALPRO), attended as special guests and served as rapporteurs informing on various aspects of the TIR Convention.

The experts participating in the Meeting agreed:

1. To express their concurrence regarding the importance of the system created by the TIR Convention to facilitate international cargo traffic;
2. To point out that its adoption also calls for decisions to be made on related aspects of particular importance, including customs facilitation of container transport and the insurance regime;
3. To recognize that the specific subject matter of the TIR system is concerned primarily with customs matters and that, consequently, it is the agencies competent in that area that must make the decisions, particularly regarding the advisability of a possible adherence to the system;
4. To stress that the final decision as to whether to adhere to the TIR Convention is strictly up to each country, but that it would be highly advantageous for the Southern Cone countries to make a collective statement on the question;
5. To approve the work programme for national meetings to be held in collaboration with interested international agencies;
6. To note with satisfaction the announcement by CEPAL regarding the carrying out of a study on the significance of the TIR Convention system for Latin America and to ask that this study should be completed in time for the next meeting of experts to prepare for the IX Meeting of Ministers of Public Works and Transport of the Southern Cone countries.

The work programme provided for the holding of seminars to study the terms under which the TIR system might be used.

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The seminars, organized by the Ministries of Transport of the respective countries in collaboration with CEPAL, were held in São Paulo (19 to 20 November 1971), Montevideo (23 November), Buenos Aires (26 and 27 November), Santiago (29 and 30 November), Asunción (15 January 1980), La Paz (16 January) and Lima (18 January).

The seminars were carried out with the assistance of Jean Duquesne, Secretary General of SITPROFRANCE and Chairman of the Working Party on Facilitation of International Trade Procedures of the Economic Commission for Europe; Mariano Mateu Casaval, Peter Groenendijk, Marcel de Gottrau and Jaime Lloret, Chairman, Secretary General, Deputy Secretary General and Advisor, respectively, of the International Road Transport Union (IRU), and Hugo Opazo, Director of Trade Policies of LAFTA, who presented the views of their institutions regarding the TIR system and replied to questions from participants. CEPAL, for its part, presented the paper entitled "The TIR Convention in the light of the needs of the Southern Cone countries" (E/CEPAL/G.1101), 6 November 1979 (English version dated 13 July 1981).

Special mention should be made of the World Bank's active participation in scheduling and financing these meetings. The Bank's participation showed its belief in the advantages of the TIR system, as well as its conviction that action in this regard would contribute to improved utilization of regional roads for which it has supplied financing.

Representatives of the ministries of transport, national Customs, road transport operators, central banks, insurance commissions, ministries of foreign relations, and other official and private entities concerned with international road transport took part in each seminar.

On 3 October 1980, the Government of the Eastern Republic of Uruguay promulgated Act No. 15064, by which it approved the Customs Convention on the International Transport of Goods under Cover of TIR Carnets (TIR Convention), done at Geneva in 1975, thus becoming the first Government of the region to adhere to this instrument aimed at facilitating international transport.

VI. OTHER EXPRESSIONS OF INTEREST IN INTERNATIONAL CUSTOMS TRANSIT

At the XVII Congress of the International Road Transport Union (IRU), held at Seville (Spain) from 4 to 8 May 1980, and as a contribution to the effort of the Southern Cone countries in examining the question of adhering to the TIR Convention, a Symposium on the Possible Application of the TIR Convention in Latin America was held. In addition to the Latin American representatives (Argentina, Brazil, Chile, México, Peru, Uruguay and Venezuela), delegations of transport operators from Europe, Asia, Africa and North America, as well as representatives of ECE and CEPAL, participated in this event.

The Symposium considered that encouraging the application of the TIR Convention among the countries of the region was of the greatest importance for the development of international transport in Latin America. In this respect, it agreed on the following: (a) through the Transport Operators Associations, to promote the adoption of the TIR Convention in the Latin American countries, by informing Government authorities of the advantages of the system in facilitating the international transit of goods; (b) to ask the X Meeting of Ministers of Public Works and Transport of the Southern Cone countries, to be held in Brasilia during the last quarter of 1980, to study and adopt a resolution encouraging these countries to adhere to the TIR Convention of 1975; (c) to ask CEPAL, in collaboration with the Spanish Customs, IRU and ECE, to prepare a manual on the application of the TIR Convention that will meet the needs of Customs and transport operators in Latin America, particularly in the Southern Cone countries; (d) to encourage the

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organization of training seminars in Europe for personnel of the customs services of the Latin American countries that are interested in applying the TIR system, using as a basic document the manual mentioned in point (c) and with audiovisual support in the form of a film to be prepared by IRU and ECE in order to publicize TIR operations, and (e) to ask ECE, CEPAL and the Spanish General Directorate of Customs to provide their support, together with IRU, through courses and technical missions for the application of the TIR system in those countries that adhere to the convention.

CEPAL convened a meeting of experts in Santiago, Chile, from 16 to 20 March 1981, to establish priorities for a programme of co-operation with the South American countries aimed at the institutional strengthening of international transport and the facilitation of trade. They identified the clearance of goods at the point of destination and a harmonized customs transit system as being two of the most important points of such a programme.

The Group of Experts considered that the clearance of goods at the point of destination would reduce delays at the frontier to a minimum, inasmuch as the only procedure to be carried out at the frontier would be the identification of the vehicle and the verification by Customs that the seals on the container or the load compartment of the vehicle were intact. Moreover, clearance at the point of destination would mean that importers would not have to pay the high cost of custom escorts and subsistence payments for customs agents inspecting the imported cargo on the importer's premises.

The industrial growth of South America has shown that the countries of the subregion are capable of rapidly increasing their physical production; however, this growth also shows the serious need for modernizing the institutional infrastructure of transport, particularly as regards the application of common procedures for customs transit of goods. Although there are certain customs provisions that provide for transit operations, they do not constitute subregional standards and have not been conceived for the specific purpose of facilitating transport between South American countries.

In view of this situation, the Group of Experts considered that the TIR Convention of 1975 was an instrument that had been useful to other countries in facilitating customs transit and thus international transport.

In accordance with the above, the experts believed it advisable to recommend to the Governments of the South American countries that they should study the advantages that might be gained from applying the TIR Convention in order to meet their national goals as regards the expansion of foreign trade. To support these efforts, the Group of Experts recommended that CEPAL, in close co-operation with the Andean Group, the Latin American Integration Association (ALADI), ECE and IRU, should expand its work programme in connexion with the dissemination of the TIR Convention so as to include all the South American countries. The experts stressed that in carrying out this recommendation, consideration should be given to the importance of: (a) establishing mechanisms for co-operation among the customs administrations of all the countries; (b) holding seminars in all the South American countries for the purpose of analysing the TIR Convention and the terms under which it should be used, and (c) providing technical assistance to countries that adopt the TIR Convention, during the initial stage of its application.

The experts recommended that, if the findings of the study concerning the advisability of adopting the TIR Convention as an instrument for solving the region' customs transit problems were negative, the countries should consider, as an alternative way of achieving a simplified and harmonized customs transit system,

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the preparation of a regional convention. In addition to following the general lines of the TIR Convention or similar agreements, such a convention might include standards and mechanisms suited to the needs of the region.

At their first meeting, held from 4 to 8 May 1981 in Buenos Aires, the National Customs Directors of Latin America agreed to support the efforts being made by CEPAL in the area of foreign trade and international transport facilitation and to stress the need to convene, as soon as possible, a group of customs experts who should analyse the whole range of customs transit problems in regional transpor and reach specific agreements aimed at facilitating such transit at the regional and subregional levels.

The National Customs Directors of ALADI, meeting on the same occasion in Buenos Aires, recommended the convening, as a priority matter, of a meeting of experts to examine the question of regional customs transit, which they considered to be important for the development of trade among the ALADI countries. At that meeting, the experts would study the possibility of either adhering to the TIR Convention or adopting a regional convention along the lines of the proposal contained in the report of the Meeting of Experts on Facilitation of Trade and Institutional Strengthening of International Transport in South America (E/CEPAL/G.1178, 27 March 1981).

The Second Meeting of National Customs Directors of Latin America, held at Mexico City from 8 to 11 September 1981, took note of the preparations made by ALADI, in close collaboration with CEPAL, to convene during 1981 the group of experts from member countries, which would study the choice of either adopting the TIR Convention or preparing a separate convention to establish a regional customs transit régime. The Directors agreed to recommend that the Temporary Secretariat of the Meeting should convene in 1982 a meeting of customs transit experts from all the Latin American countries, who would continue studying this subject in the light of the progress made within ALADI and of the relevant technical studies carried out by CEPAL.

VII. CONCLUSIONS

Bearing in mind the events outlined above, it may be said that the South American countries have been increasingly concerned with the question of customs transit, as a result of the serious obstacle which the lack of harmonized provision in this area presents to the development of intra-regional trade by land. Several specialized forums in the areas of transport and customs have pointed out the urgent need to decide in what way international co-operation can be applied to overcome this problem.

The South American countries may choose one of the three options currently available for the establishment of a harmonized customs transit system, which may be summarized as follows:

1. To draw up and negotiate a regional convention that would include an effective and inexpensive solution to the guarantee requirement in connexion with potential liability for customs duties on goods in transit;

2. To adhere to the TIR Convention, an instrument that is open to all member countries of the United Nations, and to join the IRU Guarantee Chain, the only one in force at present; and

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3. To adhere to the TIR Convention and establish a separate guarantee chain, composed of national guarantee associations in the countries of the region, that would issue its own TIR carnets whose validity would be limited to the countries participating in the chain. In addition, the possibility of establishing an agreement between the regional guarantee chain and IRU's chain to cover trade between countries of the region and those countries where IRU's TIR carnets are valid might be studied.